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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,447	03/15/2004	David Patrick Forr	03382-P0119A	1228
7590 10/18/2006			EXAMINER	
Eugene L. Flanagan III Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036-6799			TANG, SON M	
			ART UNIT	PAPER NUMBER
			2612	

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,447

Applicant(s)

FORR ET AL.

Examiner

Son M. Tang

Art Unit

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims **1-25, 27-32 and 34-36** are rejected under 35 U.S.C. 103(a) as being unpatentable over Busche et al. [US 2003/0055707; Busche] in view of Hines et al. [US 6,396,413; Hines].

Regarding to claims 1, 3: Busche discloses a method for monitoring the presence of participants in a market research study, comprising:

-providing local signal transmitters 331-338 (EGPS which replace GPS) at predetermined locations within a commercial establishment to wirelessly transmit location signals associated with the locations relatively to the products [cited at ¶ 0063];

-providing a wireless receiver (attached to shopping basket) to each of a plurality of participants, which receives respective ones of the location signals only when in a vicinity of each of the locations and stores the plot location data [cited at ¶ 0065, lines 5-10 and ¶ 0071] for use in the market research study [cited in Fig. 3 and ¶ 0059, 0068 and 0069].

Busche does not specifically disclose that the receiver being adapted to be carried on the person. Hines teaches a personal monitor system comprising a receiver 20 which is carried on a person for recording the locations and time stamp data that transmitted from the transmitters 18 located at predetermined position throughout the premises [see Fig. 1, col. 3, lines 25-67 and col. 4, lines 1-6]. It would have been obvious of one having ordinary skill in the art at the time of the

Art Unit: 2612

claimed invention is made to have a receiver that carried on the person as suggested by Hines, to the participants in a market research study of Busche, for the purpose of more convenience and accurate.

Regarding to claims 2, 4: Busche discloses all the limitation as described above, except for not specifically discloses that comparing time data and location signals to determined participants movement in the commercial establishment over time. Since, the basket receiver recorded time points and locations of its movement throughout the store, it is obvious of one having ordinary skill in the art to use that data to determine customer movements in the commercial establishment over time.

Regarding to claims 5, 9 and 14-18: Busche discloses a method of gathering data representing customer behavior in a commercial establishment, comprising:

- providing a layout map representing a plurality of locations within a commercial establishment met by local signal transmitters 331-338 (EGPS which replace GPS) at [cited at ¶ 0063];

- providing a portable monitor 344 (attached to shopping basket) to each of a plurality of panelists participating in a customer behavior study [¶ 0065];

- gathering panelist presence data in the portable monitors 340-344, representing a presence of respective ones of the panelists at identified ones of the locations within the commercial establishment and with plurality of locations represented by the layout map 331-338 [cited at Fig. 3, ¶ 0065 lines 5-10, ¶ 0059, 0068 and 0069].

Busche does not specifically disclose that the receiver being adapted to be carried on the person and to record time data. Hines teaches a personal monitor system comprising a receiver

Art Unit: 2612

20 which is carried on a person for recording the locations and time stamp data that transmitted from the transmitters 18 located at predetermined position throughout the premises [see Fig. 1, col. 3, lines 25-67 and col. 4, lines 1-6]. It would have been obvious of one having ordinary skill in the art at the time of the claimed invention is made to have a receiver that carried on the person as suggested by Hines, to the participants in a market research study of Busche, for the purpose of more convenience and accurate.

Regarding to claims 6 and 12: Busche discloses wherein gathering data comprises receiving wireless transmitted location indicating data in the portable monitors representing ones of the locations and relative products within the commercial establishment [cited ¶ 0065 and 0074].

Regarding to claims 7-11: Busche disclose all the limitations as described above, and further discloses gathering data in the portable monitors representing exposure of respective ones of the panelists to a particular item or product that relatively to the transmitter within that vicinity. It is common for store or market to have pre-recorded advertisement (e.g new products, products on sale, etc.) that broadcast via TV or any type of monitor located at the places that render the attention of the shoppers, the places would be for example near the entrance, outside the store or at each aisle. Therefore, it would have been obvious to one having ordinary skill in the art to have the location transmitter positioned at any appropriate locations that are being monitored, including the media data and out door advertising as claimed.

Regarding to claim 12: Busche discloses all the limitation as described above, Busche further discloses that associating data representing displays products offered for sale with

Art Unit: 2612

selected ones of the plurality of locations represented by the layout map [see ¶ 0063, lines 8-13 and ¶ 0069].

Regarding to claims 19-20: Busche discloses all the limitation as described above, except for not specifically discloses a step of calibrating an inertial monitoring unit within each of the portable monitors, however, Busche further disclosed that the portable receiver is used a time difference of arrival technique [cited at ¶ 0065 lines 5-7], whereby, the time difference technique feature used to determine the presence of the panelist at a location. Therefore, It would have been obvious of one having ordinary skill in the art at the time of the claimed invention to recognize that the time difference technique determination feature of a portable monitor receiver is a calibrating feature for calibrating an inertial monitor unit.

Regarding to claim 21: Busche discloses all the limitations as described above, except for specifically discloses that the media data exposure (transmitter) is an acoustic media (frequency type). Acoustic frequency is one of a known type of communication frequency in the art. As long as, the portable monitors are being received the location data from the respective transmitter via RF or any other type of frequency as it desired, to have an additional frequency receiver such as acoustic frequency receiver in the portable monitor to receive media data is a matter of design choice. Therefore, it would have been obvious of one having ordinary skill in the art at the time of the claimed invention, to employ any appropriate additional feature for the purpose of additional information including the acoustic media receiver as claimed.

Regarding to claims 13 and 22: Busche and Hines disclose a relational database storing data representing consumer behavior in a commercial establishment, comprising:

Art Unit: 2612

-a record of plurality locations, plurality specific time points and products location [as shown in Fig. 3, ¶ 0065, 0068 to 0069 and 0074]. Busche does not specifically disclose a first table storing first records, including a first field storing wireless transmitter positioned in commercial establishment and a second field storing wireless transmitter location of retail establishment, and a second table storing a second records each includes a first field representing a consumer participating and a second field representing a respective one of the plurality of wireless transmitters. Examiner take Official Notice that a database is memory storage of data information that can be formed and organized by multiple registers and each register can be implemented to be stored specific data. Therefore, it would have been obvious of one having ordinary skill in the art at the time of the claimed invention to implement the database to store different data, for example transmitters position of commercial establishment in a first field of a first table, and transmitters location of retail establishment in a second field of a first table and so on as claimed.

Regarding claims 23-25 and 30-32: Busche discloses a method for monitoring the presence of participants in a market research studies, comprising:

-providing a plurality local signal transmitters 331-338 (EGPS and detectors) at predetermined locations within a commercial establishment and said transmitters in respective vicinities of products offered for sale (e.g. EGPS 334 is respective in a vicinity of product 320) and wirelessly transmit location signals associated with the locations [cited at ¶ 0061-0063];

-providing at least one of the participants in the market the respective wireless receiver (attached to shopping basket), which receives respective ones of the location signals when in a

Art Unit: 2612

vicinity of each of the locations and stores the location and time data [cited at ¶ 0065, lines 5-10] for use in the market research study [cited in Fig. 3 and ¶ 0059, 0068 and 0069].

Busche does not specifically disclose that the receiver being adapted to be carried on the person. **Hines** teaches a personal monitor system comprising a receiver 20 which is carried on a person for recording the locations and time stamp data that transmitted from the transmitters 18 located at predetermined position throughout the premises [see Fig. 1, col. 3, lines 25-67 and col. 4, lines 1-6]. It would have been obvious of one having ordinary skill in the art at the time of the claimed invention is made to have a receiver that carried on the person as suggested by Hines, to the participants in a market research study of Busche, for the purpose of more convenience and accurate.

Regarding claims 27 and 34: Busche and Hines disclose all the limitations as described above, that plurality transmitters are transmitting a database stored accurate establishment of positions of products within the store [see ¶ 0061, lines 6], would obviously including the transmitter that identifying the commercial establishment data.

Regarding claims 28 and 35: Busche and Hines disclose all the limitations as described above, but does not specific that said transmitters are disposed proximity to an entrance of the commercial establishment. Since, the transmitter is being transmitted the commercial establishment data which included the location of the relative product within the vicinity of the receiver. It would have been obvious to one having ordinary skill in the art to dispose the transmitter at any appropriate locations that to be monitored, including the location in proximity to the entrance of the commercial establishment.

Regarding claims 29 and 36: Busche further discloses each data stored is being downloaded by plurality base stations (390-392) whereby a centralized processor is inherently included in the system for analyzing the received data, and the identity of the participants is determined through the financial transaction at the checkout base station [¶ 0065].

3. Claims **26 and 33** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Busche** in view of **Hines**, and further in view of **Duhamel** et al. [US 5,541,585; Duhamel].

Regarding claims 26 and 33: Busche and Hines disclose all the limitations as described above, except for not specifically disclose the person presence detection in proximity to one of the signal transmitters, which is adapted to not transmit the signal when the person is not detected. **Duhamel** teaches a transmitter 16 is adapted to not transmit the interrogation signal when the person is not detected [see Fig. 3-4 and the Abstract lines 4-8]. It would have been obvious of one having ordinary skill in the art at the time of the claimed invention to employ a presence detector as suggested by Duhamel in the system of Busche and Hines, for the benefit of conserving energy to the system, since the transmitter's oscillator requires more processing and power, while presence sensor may use less power than the transmitter.

Response to Arguments

4. Applicant's arguments filed 8/01/06 have been fully considered but they are not persuasive.

Applicant argued: (1) How would Busche and Hines combination be more convenient and accuracy? (2) Hines provides only general information not "pinpoint coordinates". (3)

Art Unit: 2612

Applicant expressly argued in the third paragraph of page 6. (4) Busche does not receive only one signal in a vicinity of each of the locations. (5) Applicant does not find that Duhome combined with Busche is obvious.

Examiner responsive: (1) Busche teaches location tracking device fits on the basket, Hines teaches location tracking device fits on a tracking person, since, not all shopper need a shopping basket in the retail environment while they just want to check for price or product, they do not need to carry shopping basket, thus, carry only location tracking receiver on the person is much comfortable and convenience than carry an unnecessary shopping basket. Further more, the location tracking receiver is intended to use to track shopper locations not the shopping basket locations, therefore, wearing location tracking receiver on the person is more accurate than on the basket. (2) Examiner uses Hines merely to interpret that location tracking receiver can be worn on person, not Hines tracking system and that can be modified with Busche system. (3) Examiner not clearly understand what Applicant means in that paragraph, however, in [¶ 0065] Busche shows that tracking receiver records location at specific time points (every second) of the customer movements throughout the retail space, so that every second the receiver record location and time. (4) EGPS transmitter 331-338 transmit a signal contains a precise location of a product in the store [¶ 0063, lines 8-11], in this context, a precise location is the location signal that only associates with a specific product. (5) As expressly indicated in the claims rejection above that proximity sensor of Duhome merely interpret that transmitter only activates upon detection of presence, therefore, it is perfectly combinable in the Busche's transmitter for many purpose, including a conserve energy.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

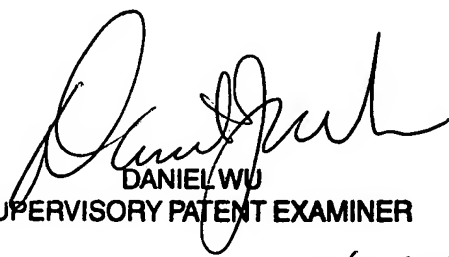
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son M. Tang whose telephone number is (571)272-2962. The examiner can normally be reached on 4/9 First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel J. Wu can be reached on (571)272-2964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Son Tang


DANIEL WU
SUPERVISORY PATENT EXAMINER
10/16/06